

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jessica Kulig	Team: Team # 5	CCRB Case #: 201311116	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 11/23/2013 3:00 PM	Location of Incident: § 87(2)(b)	Precinct: 104	18 Mo. SOL 5/23/2015	EO SOL 5/23/2015	
Date/Time CV Reported Mon, 11/25/2013 9:36 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 11/25/2013 9:36 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Anthony Wright	21501	935991	104 PCT
2. POM Louis Marinacci	22579	941229	104 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Anthony Wright	Abuse: PO Anthony Wright searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	§ 87(2)(b)
B.POM Louis Marinacci	Abuse: PO Louis Marinacci searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	§ 87(2)(b)
C.POM Louis Marinacci	Abuse: PO Louis Marinacci threatened to arrest § 87(2)(b)	§ 87(2)(b)
D.POM Louis Marinacci	Abuse: PO Louis Marinacci searched § 87(2)(b)'s cellphone.	§ 87(2)(b)

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via the online website on November 25, 2013 (encl. 4A-4E).

At approximately 3 p.m. on November 23, 2013, § 87(2)(b) and his brother, § 87(2)(b) were stopped in their vehicle as they approached the intersection of § 87(2)(b) and § 87(2)(b) in Queens. The following allegations resulted:

- **Allegation A – Abuse of Authority: PO Anthony Wright searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.**
- **Allegation B – Abuse of Authority: PO Louis Marinacci searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.** § 87(2)(g)
- **Allegation C – Abuse of Authority: PO Louis Marinacci threatened to arrest § 87(2)(b)** § 87(2)(g)
- **Allegation D – Abuse of Authority: PO Louis Marinacci searched § 87(2)(b)'s cellphone.** § 87(2)(g)

An IAB spin-off was created under CCRB # § 87(2)(b) for § 87(2)(b)'s allegation that PO Marinacci deleted video footage from his cellphone.

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) *a 6'1" tall, 190 lb. white man with blond hair and blue/gray eyes, was § 87(2)(b) years old at the time of the incident.* § 87(2)(b) *He is § 87(2)(b)'s brother.*

CCRB Statement

§ 87(2)(b) provided statements pertaining to the incident during his initial complaint on November 25, 2013, over the telephone on December 2, 2013 (encl. 6A), and in person at the CCRB on December 6, 2013 (encl. 6B-6D). § 87(2)(g)

At approximately 3 p.m. on November 23, 2013, § 87(2)(b) and § 87(2)(b) left their house, located at § 87(2)(b) in Queens. They got in the car and drove approximately two blocks, until they reached the intersection of § 87(2)(b). As they approached the intersection, § 87(2)(b) observed a black Ford or Chevy Impala parked to his left on § 87(2)(b). § 87(2)(b) suspected it was a police vehicle because he had previously been arrested on § 87(2)(b) who was the driver, stopped at the stop sign at the intersection. After stopping, § 87(2)(b) pulled forward. He had to pull into the middle of § 87(2)(b) to look

both ways because of the vehicle that was parked there. He then made a left turn.

As soon as § 87(2)(b) turned onto § 87(2)(b) the sirens on the vehicle went on. § 87(2)(b) pulled his car to the right, directly across from the police vehicle, and rolled down his window. There were two civilians standing across the street at the time, a young, blond-haired man and a young woman.

An officer, whom § 87(2)(b) identified by name as PO Anthony Wright, approached the driver side window and requested § 87(2)(b)'s registration and insurance card. § 87(2)(b) provided this documentation. During his initial complaint, he stated that he did not have his registration but provided his license and insurance card. PO Wright asked, "Do you know why I stopped you?" § 87(2)(b) replied, "I don't know." PO Wright said, "Yeah, you ran that stop sign." § 87(2)(b) told PO Wright that he did not think he ran the stop sign and explained that he had seen the police vehicle before he even reached it. PO Wright said, "Okay." He asked § 87(2)(b) to roll down the back driver side window. He then went back to the police vehicle.

PO Wright returned to the vehicle approximately 10 seconds later. He asked § 87(2)(b) "Have you ever been arrested before?" § 87(2)(b) told PO Wright that he had been arrested for § 87(2)(b) three years prior and that PO Wright was the arresting officer. § 87(2)(b) then asked him for his name, and he said, "PO Wright."

PO Wright told § 87(2)(b) to step out of the car. § 87(2)(b) asked, "Why? What is the reasoning for me to step out of the car?" PO Wright did not respond, so § 87(2)(b) said, "Okay, you're not going to give me a reason." PO Wright again asked him to step out of the car, this time louder and more aggressively. § 87(2)(b) complied. During his initial complaint, § 87(2)(b) stated that he got out after PO Wright asked a third time.

As soon as § 87(2)(b) got out of the vehicle, PO Wright told him he was under arrest for § 87(2)(b). § 87(2)(b) said, "Really? I just asked you why. I'm just asking for an explanation. That's why you're going to arrest me?" § 87(2)(b) initially stated that PO Wright pushed him against the vehicle. He later clarified that PO Wright told him, "Turn around." When he turned around, he put his hands behind his back, and PO Wright handcuffed him. PO Wright said, "Oh, you're resisting arrest now." § 87(2)(b) stated that he was not resisting.

PO Wright searched § 87(2)(b)'s pockets, removing his cellphone and wallet. He removed § 87(2)(b)'s license and placed the rest of his property in the vehicle. He then put § 87(2)(b) in the back seat of the police vehicle.

PO Wright's partner, identified via investigation as PO Louis Marinacci, whom § 87(2)(b) described as a 5'9" tall, 30yearold white man with brown hair, brown eyes, and an average build, got out of the police vehicle. He went to the passenger side of § 87(2)(b)'s car. § 87(2)(b) got out of the vehicle. § 87(2)(b) did not hear what PO Marinacci said to § 87(2)(b) but he assumed he asked him to get out of the car.

At this point, PO Wright began searching the vehicle. He never requested permission, and § 87(2)(b) never gave him consent. § 87(2)(b) appeared upset about what was happening. He said, "You can't do that." His hands were raised with his palms facing out. PO Marinacci told him to back up or he would also be arrested. § 87(2)(b) complied.

PO Wright searched the front of § 87(2)(b)'s car. His feet were sticking out, but the majority of his body was inside. § 87(2)(b) could not see the front seat from where he was positioned, but he stated that PO Wright appeared to be going under the seat. The back driver side door was also open. He searched the vehicle for approximately one minute.

At one point, PO Wright came back to the police vehicle and asked § 87(2)(b) "You got anything in your car?" § 87(2)(b) responded, "No, and I don't know why you keep asking me this. You stopped me for a stop sign. I don't know where you're going with this." PO

Wright also asked § 87(2)(b) if he knew the two civilians across the street. § 87(2)(b) said he did not know them. PO Wright then told them to “get out of there.”

PO Wright and PO Marinacci both got into the police vehicle. PO Wright sat in the driver seat, and PO Marinacci sat in the passenger seat. They transported § 87(2)(b) to the 104th Precinct stationhouse. He was first taken to the front desk and then to a holding cell. At some point, PO Wright and PO Marinacci took him to a bathroom. PO Wright said, “I think you have marijuana on you.” § 87(2)(b) responded, “Okay, but I don’t.” PO Wright asked, “Can I search you?” § 87(2)(b) responded, “Yeah. Go ahead. You’re not going to find anything. I don’t know where you’re getting this from.” PO Wright patted § 87(2)(b) on his legs.

§ 87(2)(b) was taken back to the holding cell, where he remained until he went to central booking approximately five hours later. He later learned from § 87(2)(b) that he had been recording the officers on his phone as they searched the vehicle. At some point, PO Marinacci took § 87(2)(b)’s phone and deleted the video. § 87(2)(b) did not see PO Marinacci with § 87(2)(b)’s phone.

Besides his arrest for § 87(2)(b) three years prior, § 87(2)(b) was also stopped in his vehicle by PO Wright in January 2013 for an expired inspection sticker. § 87(2)(b) specified that he was not complaining about that incident.

Victim: § 87(2)(b)

- § 87(2)(b) a 6’3” tall, 185 lb. white man with dirty blond hair and hazel eyes, was § 87(2)(b) old at the time of the incident. He § 87(2)(b)

CCRB Statement

§ 87(2)(b) provided statements pertaining to the incident over the telephone on December 6, 2013 (encl. 7A) and in person at the CCRB on December 10, 2013 (encl. 7B-7E). § 87(2)(g)

At approximately 3 p.m. on November 23, 2013, § 87(2)(b) and § 87(2)(b) left their house, located on § 87(2)(b) in Queens, to play soccer with friends. § 87(2)(b) was driving, and § 87(2)(b) was in the passenger seat. The vehicle was a blue Nissan Maxima. They drove approximately three blocks on § 87(2)(b). As they approached the intersection with § 87(2)(b) § 87(2)(b) observed a black unmarked vehicle parked on § 87(2)(b) blocking the left side of § 87(2)(b). It appeared as if the car was about to turn, but it backed up instead. § 87(2)(b) made a left turn onto § 87(2)(b).

As they turned onto § 87(2)(b) PO Wright and PO Marinacci, who § 87(2)(b) later learned to be police officers, gestured for them to pull over. § 87(2)(b) pulled over to the right side of the road immediately. The officers pulled their vehicle around and parked behind them. They exited the police vehicle. PO Wright, who § 87(2)(b) described as a 5’8”-5’11” tall, 30 to 40-year-old Hispanic man with black hair and a medium build, approached the driver side. PO Marinacci, who § 87(2)(b) described as a 5’8”-5’11” tall, white male with dark brown hair, dark eyes, and a medium build in his late 20s to mid-30s, approached the passenger side.

PO Wright asked for § 87(2)(b)’s identification. § 87(2)(b) said, “Why did you pull us over?” At first, PO Wright did not answer. Eventually, he said that they had tinted windows, a broken taillight, and that they ran a stop sign. § 87(2)(b) said, “How could we not stop at the stop sign? You were in the way. We had to stop.” PO Wright began asking where they were going and what they were doing. He spoke in an aggressive tone. At one point, § 87(2)(b) asked for PO Wright’s name. He did not respond. Instead, he told § 87(2)(b) to get out of the car. § 87(2)(b) asked, “Why do you want me to step out of

the car?” He eventually exited.

Approximately five seconds after § 87(2)(b) stepped out of the vehicle, PO Wright told him to turn around. He complied, and PO Wright handcuffed him. He told § 87(2)(b) that he was under arrest. PO Wright then brought him to the back of the police vehicle. § 87(2)(b) did not see his brother after this point. He was still in the passenger seat. At some point, PO Marinacci, who had been standing next to § 87(2)(b) the whole time, went to the police vehicle.

PO Wright came back and began searching § 87(2)(b)'s vehicle. He entered the front driver side. § 87(2)(b) was still in the car. PO Marinacci came back to the passenger side. PO Wright searched the driver seat and looked around the pedals. He then moved towards the center console, which was closed at the time. PO Marinacci opened it and looked through it. He took out a cigar wrapper and asked § 87(2)(b) if he was on drugs. § 87(2)(b) said, “No.” § 87(2)(b) stated that the cigar wrapper was at the bottom of the center console, underneath papers and “a bunch of stuff.” It was not in plain view, and PO Wright moved the items around to get to it.

PO Marinacci asked § 87(2)(b) to get out of the car. § 87(2)(b) did not recall his exact words. He was not aggressive, but he spoke in a commanding tone. § 87(2)(b) complied immediately. At some point, PO Marinacci took § 87(2)(b)'s identification. He believed it may have been when PO Marinacci asked him to get out of the car, but he was not sure. PO Marinacci then began searching the vehicle too. He searched the front passenger seat. § 87(2)(b) did not recall if PO Marinacci went into the center console, but he saw him hovering over it. Both of the officers also looked into the back seat from where they were positioned in the front. § 87(2)(b) did not see either of them open the back doors or go into any other closed compartments.

§ 87(2)(b) began recording the officers on his cellphone. He held his phone in his right hand, recording for approximately 30 to 45 seconds. He walked up to the window to get a better view. When PO Marinacci realized he was recording, he got out, pushed § 87(2)(b)'s arm with one hand, and snatched the phone with his other hand. He never asked § 87(2)(b) for the phone. He said either, “You can’t record us,” or, “What do you think you’re doing?” He threatened to arrest § 87(2)(b) and then told him to sit on the curb.

Two people, a man and a woman, who § 87(2)(b) did not know, were standing across the street. § 87(2)(b) yelled to these individuals to record the incident. PO Marinacci asked him if he knew them. He said, “No, I don’t even know who they are.” PO Marinacci then threatened to arrest them if they did not leave. They left immediately.

PO Marinacci, who was still holding onto § 87(2)(b)'s phone, went to the police vehicle. He appeared to be looking for the video that § 87(2)(b) had recorded. He searched through the phone for approximately two minutes. When PO Marinacci eventually returned his phone, § 87(2)(b) saw that the video had been deleted.

§ 87(2)(b) asked the officers if they had asked anyone to search the car and whether they had probable cause. PO Marinacci became “aggressive” and brought his upper body close to § 87(2)(b). He again threatened to arrest him for something, which § 87(2)(b) remembered to be a three-letter word. He asked PO Marinacci what it meant, and PO Marinacci said, “Oh, you wanna find out? I’ll take you down to the precinct.” § 87(2)(b) stopped asking questions because he feared he would be arrested.

The officers eventually left with § 87(2)(b). The incident lasted approximately 10-15 minutes. § 87(2)(b)'s friends, § 87(2)(b) and “§ 87(2)(b)” came and parked the car. They then immediately drove to the precinct and tried to figure out § 87(2)(b)'s arrest charges. They saw PO Wright while they were there, and § 87(2)(b) attempted to get his name and shield number. PO Wright refused to provide this information at first but eventually

gave it to him.

Attempts to Contact Civilians

Because neither § 87(2)(b) nor § 87(2)(b) provided the names of the civilians who witnessed the incident, they could not be contacted.

NYPD Statements:

Subject Officer: PO ANTHONY WRIGHT

- *PO Wright, a 5'8" tall, 190 lb. black man with brown hair and brown eyes, was § 87(2)(b) old at the time of the incident.*
- *On the day of the incident, PO Wright worked between 9:30 a.m. and 6:05 p.m. He was assigned to SNEU with PO Louis Marinacci. He was dressed in uniform and worked in unmarked vehicle number 477, a black Chevy Impala.*

Memo Book (encl. 8A-8D)

At 3:10 p.m., a 2006 Nissan, license plate number § 87(2)(b) was stopped at the corner of § 87(2)(b) and § 87(2)(b). At 3:20 p.m., a complaint report was filed for § 87(2)(b) for § 87(2)(a) 160.50. § 87(2)(b) ran a stop sign, causing the RMP to swerve. He was asked for his identification several times. He refused to comply. He was asked to exit the vehicle multiple times, which he refused to do. Det. Wright suspected a weapon near the seat. § 87(2)(b) acted in a threatening and aggressive manner. He resisted arrest by making his arms stiff. At 5 p.m., Det. Wright completed arrest report number § 87(2)(a) 160.50 for § 87(2)(b) who was 6'1" tall, 190 lbs., had blond hair and blue eyes, was born on § 87(2)(b) and resided at § 87(2)(b) § 87(2)(b).

Arrest Report (encl. 8E-8I)

§ 87(2)(a) 160.50

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Supporting Depositions (encl. 8J-8K)

§ 87(2)(b)

§ 87(2)(a) 160.50

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

CCRB Statement

PO Anthony Wright was interviewed at the CCRB on January 29, 2014 (encl. 8L-8N).

At approximately 3:10 p.m. on November 23, 2013, PO Wright was driving eastbound on § 87(2)(b) in Queens, approaching the intersection of § 87(2)(b). He was moving at approximately 15-20 miles per hour. PO Marinacci, was in the passenger seat. An individual, who PO Wright later learned to be § 87(2)(b) was driving northbound on § 87(2)(b) approaching the same intersection. As PO Wright reached the intersection, § 87(2)(b) went through the stop sign, causing PO Wright's vehicle to swerve. PO Wright went over the

PAA speaker and said, “Sir, pull your car to the right.” He also put the police lights on. He was about four feet away from § 87(2)(b)’s vehicle at that point. § 87(2)(b) made a left turn. He then pulled over after a few seconds. PO Wright turned the RMP around and pulled behind § 87(2)(b).

PO Wright and PO Marinacci got out of the vehicle. PO Wright approached the driver side, and PO Marinacci went to the passenger side. There was a male passenger, identified by the investigation as § 87(2)(b).

PO Wright requested § 87(2)(b)’s identification and paperwork. § 87(2)(b) was uncooperative. He said, “I’m not giving you my driver license.” He also accused PO Wright of harassing him. PO Wright did not remember him, but § 87(2)(b) said that PO Wright had arrested him before for § 87(2)(b). After § 87(2)(b) refused to provide his identification five or six times, PO Wright asked him to get out of the vehicle. § 87(2)(b) said, “I’m not getting out of the car.” He refused multiple times but he eventually stepped out. During this time, PO Marinacci spoke to the passenger of the vehicle. PO Wright did not recall the nature of their conversation. PO Wright did not recall if § 87(2)(b) ever provided his identification, registration, or insurance.

Once § 87(2)(b) got out of the vehicle, PO Wright attempted to place him in handcuffs to arrest him. § 87(2)(b) stiffened his arms against the side of his body. PO Wright told him, “Put your hands behind your back.” He did not remember how many times he made this command. § 87(2)(b) was not resisting in any other way, but he raised his voice. He did not recall what § 87(2)(b) said when he raised his voice. PO Wright remained calm, but firm, during their interaction.

Eventually, PO Wright was able to handcuff § 87(2)(b) by pulling his arms behind his back. PO Wright searched § 87(2)(b)’s pants pockets and waistband. He stated that this search was for contraband and weapons and was incident to the arrest. He did not recover any contraband from § 87(2)(b) and he did not recall anything being in his pockets. After searching § 87(2)(b) he placed him in the police vehicle.

Although PO Wright initially stated that nothing else happened on scene, he later stated that after placing § 87(2)(b) in the police vehicle, he looked inside § 87(2)(b)’s car. PO Wright opened the driver side door and stuck his head inside. There was no other part of PO Wright’s body inside the vehicle besides his head. He looked around the seat and the area where § 87(2)(b) could have reached with his hands, including the floor and underneath the seat. He did not search the glove compartment, and he could not recall whether he looked in the center console or the arm rest.

When PO Wright was asked about his memo book entry, which stated that he suspected there was a weapon near the seat, he said that this suspicion was based on the fact that § 87(2)(b) was uncooperative. PO Wright stated that, from his experience, when someone is uncooperative, they often have drugs or a weapon. PO Wright’s reason for searching the vehicle was that he believed § 87(2)(b) may have been in possession of narcotics or a weapon. There was nothing else about § 87(2)(b)’s behavior or the interaction that indicated to PO Wright he may have been in possession of contraband. He did not remember if § 87(2)(b) was making any movements. He did not see § 87(2)(b)’s hands when he was in the vehicle.

PO Wright did not recall if PO Marinacci entered the vehicle. He was dealing with the passenger at the time. PO Wright did not know what they were discussing. He did not notice the demeanor of the passenger. At some point, the passenger stepped out of the vehicle. PO Wright did not know if § 87(2)(b) got out on his own or if PO Marinacci asked him to get out. He did not know if the passenger ever raised his voice or had an argument with PO Marinacci.

At some point, PO Wright saw the passenger point his phone at PO Marinacci’s back, but did

not recall when this occurred. PO Marinacci grabbed the phone at some point. PO Wright did not know what precipitated this, but he stated that they have received recent intelligence reports about cellphone guns. He did not know how long PO Marinacci had the phone in his possession or whether he ever took it back to the police vehicle. He did not know if PO Marinacci ever had any conversation with the passenger about recording him on his cellphone. He eventually returned the phone.

During the incident, two or three people stood across the street at a nearby house. They were a few car lengths away from where the officers were conducting the vehicle stop. They stood and looked at the police vehicle but did not say anything to PO Wright or PO Marinacci. PO Wright never said anything to them. He did not know if PO Marinacci said anything to them.

Eventually, PO Wright and PO Marinacci transported § 87(2)(b) to the stationhouse, leaving the car in § 87(2)(b)'s custody. PO Wright never planned to impound the vehicle.

When they arrived at the stationhouse, PO Wright took § 87(2)(b) to the front desk. He did a secondary frisk at the desk around § 87(2)(b)'s chest, legs, and socks. He then brought § 87(2)(b) to the cell area.

PO Wright viewed the command log entry pertaining to the arrest of § 87(2)(b) which notes a history of drug use and a smell of marijuana. PO Wright did not recall who the desk sergeant was that day or who made the entry. He did not recall ever discussing § 87(2)(b)'s history of marijuana use or a smell of marijuana. He did not recall smelling marijuana on § 87(2)(b) or in his vehicle at any point during the incident.

PO Wright did not recall opening up the center console of § 87(2)(b)'s car or seeing his partner do this. He did not recall ever recovering a cigar wrapper from the vehicle or seeing his partner do so. PO Wright did not hear PO Marinacci threaten to arrest § 87(2)(b) or the other civilians who were watching the incident. PO Wright did not see PO Marinacci looking through § 87(2)(b)'s phone.

Subject Officer: PO LOUIS MARINACCI

- *PO Marinacci, a 5'7" tall, 180 lb. white man with black hair and brown eyes, was § 87(2)(b) old at the time of the incident.*
- *On the day of the incident, he worked between 9:30 a.m. and 6:30 p.m. He was assigned to SNEU with PO Anthony Wright. He was dressed in uniform and worked in unmarked vehicle number 477, a black Chevy Impala.*

Memo Book (encl. 9A-9C)

At 3:10 p.m., PO Marinacci conducted a car stop at § 87(2)(b) and § 87(2)(b). At 3:20 p.m., PO Wright made a crime arrest for § 87(2)(a) 160.50 § 87(2)(b). The defendant was very rude. The passenger was videotaping PO Marinacci's backside with his cellphone. PO Marinacci held onto the phone until they left the scene.

CCRB Statement

PO Marinacci was interviewed at the CCRB on January 29, 2014 (encl. 9D-9F).

At approximately 3:10 p.m. on November 23, 2013, PO Marinacci and PO Wright were driving eastbound on § 87(2)(b) in Queens at approximately 35 miles per hour. PO Wright was driving, and PO Marinacci was in the passenger seat. When they approached the intersection of § 87(2)(b) and § 87(2)(b) a car occupied by two men, who PO Marinacci later determined to be § 87(2)(b) and § 87(2)(b) went through a stop sign while traveling northbound on § 87(2)(b). The police vehicle was approximately five feet away from the intersection at the time. PO Wright swerved the police vehicle and stopped.

PO Wright put on the lights and told § 87(2)(b) over the intercom to pull to the right. Instead, § 87(2)(b) turned left and pulled over. PO Wright made a broken U-Turn and pulled behind their vehicle. Both officers got out of the police vehicle. PO Marinacci approached the passenger side, and PO Wright approached the driver side.

PO Wright explained the reason for the stop and requested § 87(2)(b)'s license, registration, and insurance. § 87(2)(b) said, "I'm not giving you my license. I'm not giving you my ID. I'm not giving you anything." PO Wright attempted to persuade § 87(2)(b) to hand over his license. He said, "I need to see your license. You went through a stop sign. I need to see your paperwork." He asked § 87(2)(b) at least four times to give him the information. Eventually, PO Wright told § 87(2)(b) to step out of the vehicle. § 87(2)(b) did not comply. PO Wright then opened the car door, and § 87(2)(b) stepped out. PO Marinacci heard this interaction but did not see it.

When § 87(2)(b) got out of the vehicle, he began "mouthing off." He said to PO Wright, "You're always following me. You're always harassing me. You're always pulling me over." PO Wright asked him to step to the back of the vehicle and place his hands behind his back. PO Wright handcuffed § 87(2)(b). PO Marinacci could not see what was going on, but he heard PO Wright say, "Stop resisting. Stop stiffening your arms." § 87(2)(b) was yelling and cursing. After he was handcuffed, § 87(2)(b) was placed in the police vehicle. PO Marinacci did not know if he was searched.

While this was going on, PO Marinacci spoke to § 87(2)(b). He asked, "Where are you coming from? Where are you going?" § 87(2)(b) repeatedly told PO Marinacci, "You're always stopping us. You're always bothering us. You gotta stop harassing us." PO Marinacci told him, "I need you to calm down." At some point, he requested § 87(2)(b)'s identification. PO Marinacci stated that he always requests identification to know if "he's dealing with a career criminal or someone who's just committing small violations on the street." § 87(2)(b) began raising his voice, continuing to ask PO Marinacci, "Why are you bothering me? Why are you harassing me?" PO Marinacci asked him to step out of the vehicle because he was irate and was acting nervous. He was moving his body around in his seat and flailing his arms. PO Marinacci thought he might have had a weapon.

At first, § 87(2)(b) did not step out of the vehicle. He said, "I'm not stepping out of the vehicle." He got out after being asked a second time. He continued to yell at PO Marinacci. PO Marinacci said, "Sir, I just met you 30 seconds ago." He then explained the reason for the stop and also threatened to arrest § 87(2)(b) for disorderly conduct. Eventually, § 87(2)(b) calmed down.

PO Marinacci did not recall the subsection of the disorderly conduct statute for which § 87(2)(b) would have been arrested. He stated that § 87(2)(b)'s yelling and flailing his arms constituted disorderly conduct. PO Marinacci believed he was causing annoyance and alarm to the people around. There were two people standing on a nearby corner. PO Marinacci did not know what they were doing or whether they were observing the stop. They never said anything to PO Marinacci or Det. Wright. PO Marinacci did not recall ever threatening to arrest them.

PO Marinacci searched the vehicle for weapons and other contraband. Because § 87(2)(b) was acting nervous, PO Marinacci suspected that he might be in possession of something illegal. At some point, he also learned that § 87(2)(b) had previously been arrested for drugs. He did not know if he learned this before or after he searched the vehicle.

PO Marinacci went into the front passenger side of the vehicle. He stood on the pavement with the rest of his body inside, and he searched what he referred to as the "grabbable" areas, which consisted of the seat, the center console, and the floor underneath the seat. PO Marinacci stated that the center console had a cover, which was open when he entered the vehicle. He did

not remember if he went through any items in the center console. He did not recall finding a cigar wrapper or asking § 87(2)(b) if he was on drugs. He did not recover any contraband in the car. He did not know if PO Wright also looked in the vehicle.

While PO Marinacci was searching, § 87(2)(b) held his phone in the air in the direction of PO Marinacci. He moved it back and forth and turned it on its side. PO Marinacci did not recall what kind of cellphone he had. He did not recall the color or the model, but he stated that it was not a flip phone. It was a normal-sized cellphone. At first, PO Marinacci stated that § 87(2)(b) was recording. He later stated that he did not know what § 87(2)(b) was doing with the phone. He did not remember if § 87(2)(b) was saying anything while he waved the phone around. PO Marinacci took the phone to make sure it was not a weapon because there are cellphones capable of firing bullets. He brought the phone to the police vehicle and looked at it to make sure there were no holes in the side. He never opened up the phone or searched through it. He never deleted any videos or looked at any videos. He returned the phone after he and PO Wright left the scene a few minutes later.

§ 87(2)(b) was brought to the stationhouse. He was searched in front of the desk and then brought to the cell area. PO Marinacci did not see him after this point. He had no interaction with § 87(2)(b) on scene, and he had never had any previous interaction with § 87(2)(b) or § 87(2)(b).

PO Marinacci reviewed the command log entry pertaining to the arrest of § 87(2)(b). He did not know who made the entry. He stated that it could have been his supervisor or the desk supervisor. He did not know who the desk sergeant was on the day of the incident. PO Marinacci never smelled marijuana in the vehicle or on § 87(2)(b) or § 87(2)(b). He never discussed a smell of marijuana with PO Wright or the desk officer.

NYPD Documents

Command Log (encl. 10S-10CC)

§ 87(2)(b) was arrested for § 87(2)(a) 160.50. It notes that § 87(2)(b) has a history of drug use and that there was a smell of marijuana. It also notes that § 87(2)(b) was strip-searched at the stationhouse, and there were negative results.

Arrest for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Status of Civil Proceedings

- § 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim as of February 24, 2014, approximately a month after the 90-day filing deadline, with regard to the incident.

Civilians Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilians CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 3A).
- This is the first CCRB complaint in which § 87(2)(b) is a victim (encl. 3B).

Subject Officers CCRB History

- PO Anthony Wright has been a member of the service for nine years and there are no substantiated CCRB allegations against him (encl. 2A-2B).
- PO Louis Marinacci has been a member of the service for seven years and there are two substantiated CCRB allegations against him. (encl. 2C).
 - In case # 201104530, a frisk allegation and a question allegation were substantiated against PO Marinacci. He received instructions.

Conclusion

Identification of Subject Officers

- § 87(2)(b) and § 87(2)(b) both identified PO Wright by name during their CCRB interviews. PO Wright had a memo book entry pertaining to the incident, and he confirmed his involvement during his CCRB interview. § 87(2)(g)
- PO Marinacci had a memo book entry pertaining to the incident, and he confirmed his involvement during his CCRB interview. § 87(2)(g)

Allegations Not Pleaded

- § 87(2)(g)
- § 87(2)(g)
- § 87(2)(g)
- § 87(2)(g)
- § 87(2)(g)
- A strip search allegation was not pleaded against PO Marinacci or PO Wright because § 87(2)(b) did not make this allegation.

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: PO Anthony Wright searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation B – Abuse of Authority: PO Louis Marinacci searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that, after § 87(2)(b) was handcuffed and placed in the back of the police vehicle, PO Wright and PO Marinacci searched his vehicle.

§ 87(2)(b) stated that while he was still in the vehicle, PO Wright entered the front driver side. He searched the driver seat and looked around the pedals. He then opened the center console and looked through it. He took out a cigar wrapper, which was at the bottom of the center console, underneath papers and “a bunch of stuff.” PO Marinacci then began searching the front passenger seat. § 87(2)(b) did not recall if PO Marinacci went into the center console, but he saw him hovering over it. Both of the officers looked into the back seat from where they were positioned in the front.

PO Wright stated that he stuck his head inside the driver side of the vehicle. He looked around the seat and the area where § 87(2)(b) could have reached with his hands, including the floor and underneath the seat. He did not search the glove compartment, and he could not recall whether he looked in the center console or the arm rest. PO Wright’s reason for searching was that he believed § 87(2)(b) may have been in possession of narcotics or a weapon. This belief was based on the fact that § 87(2)(b) was uncooperative. There was nothing else about § 87(2)(b)’s behavior or the interaction that indicated to PO Wright he may have been in possession of contraband. He did not remember if § 87(2)(b) was making any movements.

PO Marinacci stated that he went into the front passenger side of the vehicle to look for weapons and other contraband. He stood on the pavement with the rest of his body inside, and he searched what he referred to as the “lungeable” and “grabbable” areas, which consisted of the seat, the center console, and the floor underneath the seat. PO Marinacci stated that the center console had a cover, which was open when he entered the vehicle. He did not remember if he went through any items in the center console. He did not recall finding a cigar wrapper. He did not recover any contraband in the car. PO Marinacci’s reason for searching was that § 87(2)(b) was acting nervous. This led PO Marinacci to suspect that he was in possession of something illegal.

Pursuant to the automobile exception to the warrant requirement, an officer may search a vehicle when there is probable cause to believe that the vehicle contains evidence of a crime or contraband. People v. Galak, 600 N.Y.S.2d 185 (1993) (encl. 1A-1D). Vehicle occupants’ nervousness when the vehicle has been stopped for a traffic infraction does not constitute founded suspicion of criminality. People v. Garcia, 2012 NY Slip Op 8670 (encl. 1E-1H).

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Abuse of Authority: PO Louis Marinacci threatened to arrest § 87(2)(b)

It is undisputed that PO Marinacci threatened to arrest § 87(2)(b) at some point after § 87(2)(b) was handcuffed and placed in the back of the police vehicle.

§ 87(2)(b) stated that PO Marinacci threatened to arrest him twice – the first time after he noticed § 87(2)(b) was recording him on his cellphone, and the second time when § 87(2)(b) was asking him questions, such as, “Did you ask anyone to search the car?” and, “Do you guys have any probable cause to search the car?”

PO Marinacci stated that he threatened to arrest § 87(2)(b) for disorderly conduct because he kept saying, in a loud voice, “You’re always stopping us. You’re always bothering us. You gotta stop harassing us,” and, “Why are you bothering me? Why are you harassing me?” PO Marinacci also stated that he was moving his body around and flailing his arms. He did not recall the subsection for which § 87(2)(b) would have been arrested. Although he stated that there were two people standing nearby, he did not know what they were doing or whether they were observing the stop.

PO Wright did not hear the conversation between § 87(2)(b) and PO Marinacci. He did not notice the demeanor of § 87(2)(b) and he did not hear PO Marinacci threaten to arrest him.

According to Penal Law § 240.20, subsections 1 and 2 (encl. 1T), a person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, he engages in fighting or in violent, tumultuous behavior, or he makes unreasonable noise. The mere expression that one feels aggrieved by police – even when uttered in a loud voice – cannot constitute an offense. People v. Square, 872 N.Y.S.2d 693 (2008 – Crim Ct, NY Cty) (encl. 1J-1M). Taking photographs, videotapes, or tape recordings does not, on its own, constitute probable cause for arrest or detention. NYPD Patrol Guide, Section 208-03 (encl. 1Z-1LL).

§ 87(2)(g)

§ 87(2)(g)

Allegation D – Abuse of Authority: PO Louis Marinacci searched § 87(2)(b)s cellphone.

It is undisputed that PO Marinacci seized § 87(2)(b)s phone.

§ 87(2)(b) stated that, while PO Marinacci and PO Wright were searching the vehicle, he recorded them on his phone for approximately 30 to 45 seconds. When PO Marinacci saw that he was recording, he snatched the phone from him and said either, “You can’t record us,” or, “What do you think you’re doing?” PO Marinacci then went back to the police vehicle, where § 87(2)(b) saw him looking through the phone for approximately two minutes. When he eventually returned the phone, the video had been deleted.

In his memo book, PO Marinacci stated that § 87(2)(b) was videotaping his “backside” and that PO Marinacci held onto the phone until the stop was concluded. At the beginning of his interview, he also said § 87(2)(b) was recording him. Later on, he said that he did not know what § 87(2)(b) was doing with his phone, only that he was moving

it back and forth and side to side in the air, pointing it in his direction. He admitted to bringing the phone to the police vehicle, but he denied searching it or deleting any videos. He stated that his reason for taking the phone was to make sure it was not capable of firing a bullet. He simply looked at it to make sure there were no holes in the side. It was a “normal-sized” cellphone, and PO Marinacci did not recall the color.

PO Wright also stated that § 87(2)(b) was “pointing” his phone at PO Marinacci’s back. PO Marinacci grabbed the phone. PO Wright did not know why he took the phone, but he stated that they have received recent intelligence reports about cellphone guns. He did not know how long PO Marinacci had the phone in his possession or whether he ever took it back to the police vehicle.

Although PO Marinacci claimed he did not know what § 87(2)(b) was doing with his phone, he stated earlier in the interview, and in his memo book, that § 87(2)(b) was recording on his phone. PO Marinacci admitted to all of the circumstances leading up to the search, including taking the phone to the police vehicle with him. § 87(2)(g)

A warrantless search of a cellphone must be reasonable and based on an immediate need to access its contents. U.S. v. DiMarco, 2013 U.S. Dist. Lexis 16279 (S.D.N.Y. Feb. 5, 2013) (encl. 1N-1Y). Taking photographs, videotapes, or tape recordings does not, on its own, constitute probable cause for arrest or detention. NYPD P.G. Section 208-03 (encl. 1Z-1LL).

§ 87(2)(g)

§ 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date